

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA

Plaintiff,

vs.

No. 18-CR-2429-WJ

DARREN BENALLY,

Defendant.

MEMORANDUM OPINION AND ORDER
DENYING DEFENDANT'S MOTION TO DISMISS INDICTMENT

THIS MATTER comes before the Court upon Defendant's Motion to Dismiss the Indictment with Prejudice for Lack of Necessary Evidence and for the Government's Violations of *Brady v. Maryland*, filed September 8, 2018 (**Doc. 41**). Having reviewed the parties' briefs and the applicable law, the Court finds that Defendant's motion is devoid of any merit and, therefore, it is DENIED.

Defendant is charged with second-degree murder, a crime that occurred in Indian Country on March 27, 2018, in violation of 18 U.S.C. §§ 1153 and 1111. In this motion, Defendant contends that the Indictment should be dismissed because the Government has failed to provide certain numerous items of discovery, including the OMI and toxicology report and that this failure violates the Government's obligations under Rule 16 and *Brady v. Maryland*, 373 U.S. 83 (1963). The purported discovery violations happen to be the very same ones that were the subject of Defendant's motion to compel, in which the Court ruled that the Government had not violated any of its statutory or constitution discovery obligations. *See* Doc. 45. Specifically,

the Court found either that Defendant was not entitled to certain discovery, or where he was entitled to such discovery, the Government was complying as best it could with its obligations.

There is no need to make the same findings here, except to find that those findings are relevant here and do not provide any legal basis for dismissing the Indictment. Therefore, Defendant's motion is DENIED.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE